

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ALVARO ONTIVEROS,
Individually.,

Plaintiff,

v.

No.:

JESSICA ARREOLA D/B/A JA MORARR
TRUCKING, and CHRISTOPHER ANDRADE.,

Defendants.

NOTICE OF REMOVAL

COME NOW, Defendants JESSICA ARREOLA D/B/A JA MORARR TRUCKING and CHRISTOPHER ANDRADE, by and through their counsel of record, STIFF, GARCIA & ASSOCIATES, LLC (John S. Stiff, Esq., and Edward F. Snow, Esq.), and hereby file this Notice of Removal pursuant to 28 U.S. C. §§ 1332, 1441 and 1446, and in support thereof, state as follows.

1. Plaintiff Alvaro Ontiveros filed his Original Complaint for Damages (“Complaint”) in the First Judicial District Court, County of Santa Fe, State of New Mexico, in Cause No. D-101-CV-2023-02387 on September 28, 2023. *See* Plaintiff’s Complaint, hereto attached as **Exhibit A**.
2. Plaintiff alleges that he sustained damages as the result of a motor vehicle accident which occurred on February 4, 2022. *See generally*, **Exhibit A, ¶1**.
3. Plaintiff is a resident of Lea County, New Mexico.

4. Defendant Jessica Arreola, D/B/A Ja Morarr Trucking is a resident of Odessa, County of Ector, Texas. **Exhibit B**, Federal Motor Carrier Safety Administration Certificate MC-1514622-C.
5. Defendant Christopher Andrade currently resides in Mexico.
6. Plaintiff seeks damages for physical injuries, pain and suffering, permanent physical disability and disfigurement, past incurred and future medical expenses, loss of earnings, loss of life's enjoyment, emotional distress, emotional and physical pain and suffering, and punitive damages. **Exhibit A, ¶ 31, 32.**
7. Consistent with the Rules of Civil Procedure for the State of New Mexico, Plaintiff's Complaint does not allege a specific dollar amount for damages sought in this civil action, Rule 1-008 (A)(3) NMRA, although it does describe Plaintiff as having suffered "severe injuries," **Exhibit A, ¶ 8.**
8. While Plaintiff has not alleged a specific total amount of damages, the relief sought and the nature of the claims in Plaintiff's Complaint demonstrate that Plaintiff likely seeks damages exceeding \$75,000.00. First, the Complaint describes an accident where "Plaintiff's vehicle violently collided with Defendants' trailer, which sheared off the top of Plaintiff's vehicle." **Exhibit A, ¶ 7.** Second, a photograph of the involved vehicles taken after the accident documents significant damage to the involved vehicles. **Exhibit C.** Third, Plaintiff's counsel has represented to an insurer of Ja Morarr Trucking/Jessica Ariola that Plaintiff claims he suffered a brain injury, a large gash on the side of his head, faces the possibility of surgery and incurred other injuries.
9. Pursuant to 28 U.S.C. § 1446(c)(2), the notice of removal "may assert the amount in controversy if the initial pleading seeks a money judgment, but the State practice either

does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded,” and the district court finds, by the preponderance of the evidence, that the amount in controversy exceeds \$75,000. *See Varela v. Wal-Mart Stores, East, Inc.*, 86 F.Supp.2d 1109, 1111 (D.N.M. 2000) (When the amount in controversy, as here, is not apparent on the face of the complaint, the amount can be ascertained by considering (1) the Plaintiff’s cause of action as alleged in the complaint, (2) the notice of removal defendant filed with the federal court, and (3) any other relevant materials in the record.).

10. To confer subject matter jurisdiction on this Court based on diversity of citizenship, the amount in controversy must exceed the sum or value of \$75,000.00, exclusive of interest and cost. 28 U.S.C. § 1332(a). Where a complaint does not contain dispositive allegations of the amount in controversy, a defendant seeking federal-court adjudication, must only file a notice of removal “containing a short and plain statement of the grounds for removal.” *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S.Ct. 547, 553 (2014) citing § 1446(a). The defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court. *Id.*
11. Venue is proper in this Court, pursuant to 28 U.S.C. § 1441(b), because the State Court action is pending in New Mexico and the event giving rise to the State Court action occurred in New Mexico.
12. This Court has jurisdiction over the parties in this case pursuant to 28 U.S. C. §§ 1331, 1441, and 1446.
13. The Defendants, as required by 28 U.S.C. § 1446(d), will promptly file a copy of this notice of removal with the clerk of the State District Court where the action is pending, and give written notice to Plaintiff on this date.

14. The Defendants are filing a Notice of Filing of Notice of Removal in the state court action, a copy of which is attached to this Notice as **Exhibit D**. This Notice of Filing Notice of Removal is being filed concurrently with this Notice in the Second Judicial District, Bernalillo County, State of New Mexico, pursuant to 28 U.S.C. § 1446(d).
15. Defendants filed an Entry of Appearance in the state court action on this date, a copy of which is attached to this Notice as **Exhibit E**.
16. The Defendants will submit a certified copy of the State Court record within 28 days of filing this Notice of Removal, pursuant to D.N.M. LR-CIV 81.1(a).
17. A Civil Cover Sheet for this matter is attached hereto as **Exhibit F**.
18. This Notice of Removal is signed pursuant to the Federal Rules of Civil Procedure.

WHEREFORE, Defendants JESSICA ARREOLA D/B/A JA MORARR TRUCKING and CHRISTOPHER ANDRADE respectfully request that the state court action, now pending in the First Judicial District Court, County of Santa Fe, State of New Mexico, bearing Cause No. D-101-CV-2023-02387, be removed to the U.S. District Court for the District of New Mexico, and requests that this Court make and enter such further orders as may be necessary and proper.

Respectfully submitted,

STIFF, GARCIA & ASSOCIATES, LLC

By /s/ Edward F. Snow
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CERTIFICATE OF SERVICE

I hereby certify that on the 13th of November 2023, the foregoing was electronically filed through the PACER File & Serve system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

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